

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X
5 NAZOKAT ATAKHANOVA, individually and on
6 behalf of all others similarly situated,
7
8 PLAINTIFFS,
9
10 -against- Case No.:
11 16-cv-6707
12 (KAM) (RML)
13
14 HOME FAMILY CARE INC.,
15
16 DEFENDANT.
17 -----X
18

19 DATE: November 6, 2017

20 TIME: 10:45 A.M.

21
22
23 DEPOSITION of the Defendant,
24 HOME FAMILY CARE INC., by a witness,
25 ALEXANDER KISELEV, taken by the Plaintiff,
pursuant to a Court Order and to the
Federal Rules of Civil Procedure, held at
the offices of Naydenskiy Law Group, P.C.,
517 Brighton Beach Avenue, Brooklyn, New
York 11235, before Gary Merola, a Notary
Public of the State of New York.

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A P P E A R A N C E S:

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behalf of all others similarly situated
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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1 A. KISELEV

2 A L E X A N D E R K I S E L E V , called
3 as a witness, having been first duly sworn
4 by a Notary Public of the State of New
5 York, was examined and testified as
6 follows:

7 EXAMINATION BY

8 MR. NAYDENSKIY:

9 Q. Please state your name for the
10 record.

11 A. Alexander Kiselev.

12 Q. What is your address?

13 A. My business address is 3051
14 Brighton 3rd Street, Brooklyn, New York
15 11235.

16 Q. Good morning, Mr. Kiselev. How
17 are you?

18 A. Okay.

19 Q. We are here at a 30B6
20 deposition Nazokat Atakhanova, index
21 16-cv-6707 filed in Eastern District of New
22 York.

23 Mr. Kiselev, do you know what a
24 30B6 deposition is?

25 A. No.

1 A. KISELEV

2 Q. It is a deposition of you as a
3 representative of the corporation.

4 You are here as CEO of Home
5 Family Care, correct?

6 A. No, I'm not CEO of the company.
7 I'm the president of the company.

8 Q. You are the president of the
9 company?

10 A. Yes.

11 Q. You are here to answer
12 questions of Home Family Care as president
13 of Home Family Care, correct?

14 A. Yes.

15 Q. Just a few questions that are
16 asked at every deposition.

17 You are currently not under the
18 influence of any drugs that will affect
19 your ability to answer truthfully, correct?

20 A. No.

21 Q. Correct?

22 A. Correct.

23 Q. You're currently not on any
24 medications that will impede your ability
25 to answer truthfully, correct?

1 A. KISELEV

2 A. Correct.

3 Q. Have you had any alcoholic
4 beverages within the last 24 hours?

5 A. Yes.

6 Q. What did you have?

7 A. Red wine.

8 Q. When?

9 A. Last night.

10 Q. Will that affect your ability
11 to answer truthfully today, correct?

12 A. It is not going to affect me.

13 Q. Do you know of any reason for
14 not being able to answer truthfully today?

15 A. No.

16 Q. A few ground rules. My
17 questions are not designed to be confusing
18 or trick you.

19 If you don't understand
20 something or it is confusing, let me know
21 and I will rephrase it or I will repeat it.

22 Please answer every question
23 verbally for the Court Reporter to be able
24 to take it down.

25 Please wait for me to finish my

1 A. KISELEV

2 question so you can answer so the Court
3 Reporter will be able to take us down.

4 If you need a break, let me
5 know and we'll take a break. I just ask if
6 there is a question pending to answer the
7 question and then we will go on a break.

8 Do you understand?

9 A. Yes, I do understand. One
10 regard. I'm expecting a very important
11 call which I cannot myself --

12 MR. NAYDENSKIY: Let's go off
13 the record.

14 (Whereupon, a discussion was
15 held off the record.)

16 MR. NAYDENSKIY: Back on the
17 record.

18 Q. Mr. Kiselev, you stated that
19 you are president of Home Family Care,
20 correct?

21 A. Correct.

22 Q. What are your responsibilities
23 and duties as president of Home Family
24 Care?

25 A. Managing the entire

1 A. KISELEV

2 corporation.

3 Q. What does that entail?

4 A. Daily routine. I have several
5 departments. I have a lot of employees.
6 It is a daily routine of managing the
7 company.

8 Q. So, you manage the day-to-day
9 operations of Home Family Care?

10 A. Yes, sir.

11 Q. You mentioned there are several
12 departments.

13 Can you please tell me what
14 departments there are?

15 A. HR, billing, coordination
16 department, the payroll department. That's
17 all.

18 Q. Four departments?

19 A. Yes.

20 Q. HR, billing, coordination and
21 payroll, correct?

22 A. Yes.

23 Q. And you oversee all these
24 departments, correct?

25 A. Yes, sir.

1 A. KISELEV

2 Q. Is there a manager in each
3 department?

4 A. Yes.

5 Q. How many?

6 A. I have manager in the
7 coordination department. I'm sorry, there
8 is also the nursing department.

9 Q. Each department has one
10 manager?

11 A. Yes. We have a different name.
12 Like the nursing department, it is director
13 of patient services. That is her title.
14 HR supervisor for the HR department. For
15 payroll I have just one girl.

16 Q. One girl that is an employee or
17 one girl that is a manager?

18 A. No, one employee who runs the
19 payroll. Scheduling I have a supervisor.

20 Q. Is that within HR?

21 A. No, that is different.

22 Q. So, scheduling and HR have one
23 supervisor each, right?

24 A. It is two separate departments.

25 Q. With one supervisor for each?

1 A. KISELEV

2 A. Yes.

3 Q. And that is their title,
4 supervisor of HR or supervisor of
5 scheduling, correct?

6 A. Yeah.

7 Q. And they all report back to
8 you, correct?

9 A. Yeah.

10 Q. Does anybody else control the
11 day-to-day operations of Home Family Care?

12 A. Well, I have a branch manager
13 in the Queens office. I have -- no, that's
14 all.

15 Some years ago I had a VP who
16 was running the company, but he is no
17 longer with us for more than two years.

18 Q. Was that before 2013?

19 A. It was exactly in 2015. He had
20 a heart attack two years ago. Two years
21 ago and a couple of days.

22 Q. And you never filled that
23 position again?

24 A. Say that again.

25 Q. You never filled that position

1 A. KISELEV

2 again?

3 A. No.

4 Q. The only people with
5 operational control of Home Family Care are
6 yourself and the branch manager in Queens,
7 correct?

8 A. No.

9 MR. TSIRKIN: Objection. He
10 answered your question about
11 managers.

12 Can you rephrase it.

13 A. They all are in charge of
14 representing the departments and they
15 report to me.

16 Like if I have a question in
17 the chart office, I don't have to ask my
18 employees in the chart office. I deal with
19 the head of the charts.

20 If it is the nursing
21 department, then I deal with DPS, director
22 of patient services, but they running their
23 department on a daily basis.

24 Q. Does anybody else have
25 oversight of the collective of these

1 A. KISELEV

2 supervisors?

3 A. I don't think so, no.

4 Q. What does the branch manager in
5 Queens do?

6 A. She runs departments or he runs
7 the branch.

8 Q. Does he hire and fire people?

9 A. He has authority to interview
10 the people and present to me for final
11 approval.

12 Q. What is his name?

13 A. Luis Gonzales.

14 Q. Does every employee need final
15 approval by you?

16 MR. TSIRKIN: Can you rephrase
17 the question? To do what?

18 Q. Does every employee hired by
19 Home Family Care need final approval by
20 you?

21 A. Yes.

22 Q. Does the branch manager in
23 Queens, Mr. Gonzales, have authority to
24 fire people?

25 A. With my approval.

1 A. KISELEV

2 Q. Do you hire employees?

3 A. Yes.

4 Q. Do you hire home health aides?

5 A. Yes.

6 Q. Do you fire employees?

7 A. Yes.

8 Q. Do you fire home health aides?

9 A. Yes.

10 Q. Who are the shareholders of

11 Home Family Care?

12 A. Two shareholders.

13 Q. What are their names?

14 A. Alexander Kiselev and Marianna

15 Kiselev.

16 Q. What is the corporate split?

17 A. 50/50.

18 Q. And Marianna I assume is your

19 wife?

20 A. Yes.

21 Q. Does Marianna have any
22 authority to hire or fire people?

23 A. No, she is just a shareholder.

24 Q. So she doesn't hire people?

25 A. No, she works in a different

1 A. KISELEV

2 place. Never stepped a foot in the
3 business.

4 Q. She doesn't fire Home Family
5 employees either, correct?

6 MR. TSIRKIN: Asked and
7 answered. He already said she does
8 not have anything to do with the
9 company. She is just a shareholder.

10 MR. NAYDENSKIY: I just want to
11 clarify that she has no hiring or
12 fire.

13 A. She has no authority, she has
14 no position. She is not involved in any
15 kind of operation of the business.

16 Q. You are the final decision
17 maker, correct?

18 A. Yes, sir.

19 Q. Who has authority to sign pay
20 checks for home health aides?

21 A. Say that again.

22 Q. Who has authority to sign
23 paychecks for home health aides?

24 A. Well, we have a payroll
25 company. There is my name on the check,

1 A. KISELEV

2 but I don't sign it on every check. You
3 know that.

4 Q. So, if the home health aide
5 gets a physical check, they receive a check
6 with your electronic signature on it?

7 A. Yes.

8 Q. Provided by the payroll
9 company?

10 A. Yes.

11 Q. Can you explain the hiring
12 process of a home health aide to me?

13 A. Well, that is the authority of
14 the chart department. Whenever an
15 applicant, initially it is an applicant,
16 applies for a job, they do pre-screening of
17 the documents.

18 If the applicant presents all
19 the documents, we go through different
20 stages before the applicant will be
21 converted to the employee of the company.

22 And at this point, case
23 coordinator can see this person and place
24 on a case.

25 Q. What are those stages that you

1 A. KISELEV

2 go through?

3 A. They have to analyze all the
4 documents, like green card, Social
5 Security, physical examination, if their
6 physical examination, make sure that it's
7 up to date and we go through K charts,
8 making sure there is no criminal charges,
9 there is no violations and then we go
10 through orientation, explaining to
11 employees our policy and procedure, what
12 they can't do, what they should do and what
13 they shouldn't do under the circumstances
14 and only after that the applicant is
15 getting a new status as the employee of the
16 company.

17 Q. Upon your approval, correct?

18 A. Not mine, HR's approval.

19 Q. When the home health aide
20 becomes an employee, who supervises their
21 work?

22 A. The case coordinator, director
23 of patient services, nurses.

24 Q. Nurses that are employees of
25 Home Family Care?

1 A. KISELEV

2 A. Director of patient service is
3 full-time employee. All nurses are
4 so-called fee for service. They are hired
5 just per patient, per visit.

6 Q. Through an outside contractor?

7 A. They are all independent
8 contractors. It's industry standard, sir.

9 Q. What happens if there is a bad
10 report or a complaint about a home health
11 aide?

12 A. We do investigate what is going
13 on.

14 Q. How do you investigate?

15 A. Well, bring home health aide to
16 the office. They have to submit the paper
17 what happened and we do an investigation.
18 We talk to the patient. Sometimes God
19 forbid somebody gets to the office drunk or
20 somebody abused a family member.

21 There is different -- it is a
22 big world with a lot of situations. For
23 being in business for ten years. I cannot
24 differentiate.

25 Q. And you are not involved in the

1 A. KISELEV

2 investigation?

3 A. Sometimes I do, sometimes I'm
4 not. I have an excellent team of people
5 who can do it without me, but certain
6 situations requires my attention.

7 Q. Which have arisen within the
8 last couple of years, two years, correct?

9 A. Yeah. It's our daily routine.

10 Q. Does Home Family Care maintain
11 employee records for the home health aides?

12 A. Of course.

13 Q. What do these records consist
14 of?

15 A. Each employee has its own
16 chart. Which contains a publication, a
17 certificate, it has different documents,
18 but according to the Department of Health
19 regulation, which stores them in separate
20 places.

21 Q. The physical file?

22 A. Physical examination, yeah.

23 Q. The physical documents are
24 stored?

25 A. In the office.

1 A. KISELEV

2 Q. In the office, okay. Including
3 payroll information?

4 A. No, payroll information is held
5 by the payroll company.

6 Q. Hired by Home Family Care?

7 A. Yeah. We have been using this
8 company for about eight years.

9 Q. When a home health aide is
10 hired by Home Family Care, are they told
11 how much they will be making in wages?

12 A. Of course.

13 Q. How is this done? Is it
14 written or is it verbal?

15 A. Well, we explain to them our
16 policy and we offer them a salary.

17 Q. Is this in a document form of
18 some kind?

19 A. In a document form, I don't
20 think so. And the salary is different
21 based on the difficulties of cases, in
22 different locations. It is not like one
23 salary across the board.

24 Q. You could have a home health
25 aide working today a ten-hour shift making

1 A. KISELEV

2 \$12 an hour plus overtime, if any, and a
3 different home health aide working a
4 ten-hour shift making \$13 an hour plus
5 overtime, if any?

6 A. Yes. And it may be the same
7 home health aide making \$12 and tomorrow he
8 is going to be making 13.50 because of the
9 difficulties of the case.

10 Q. Who decides that?

11 A. We decide. Home health aides
12 can ask case coordinators to raise the
13 salary because it is a bedbound 300 pound
14 patient, it's the summertime and she wants
15 to get more and she deserves more.

16 Q. Who puts this policy in place?

17 A. It's not like a policy. We are
18 trying to accommodate people. We
19 understand their concern.

20 Q. Who has the authority to raise
21 a home health aide's salary?

22 A. Usually it's me.

23 Q. And you exercise that
24 authority, correct?

25 A. Yes, sir.

1 A. KISELEV

2 Q. Do coordinators have authority
3 to do this?

4 A. No. Whenever the inquiry from
5 the home health aide, they approach me or
6 they can call me and say home health aide
7 is requiring a bit more money because of
8 certain situation.

9 MR. TSIRKIN: Can I go off the
10 record for a second.

11 (Whereupon, a discussion was
12 held off the record.)

13 MR. NAYDENSKIY: Back on the
14 record.

15 Q. Who is in charge of scheduling
16 the home health aide for work?

17 A. Case coordinators.

18 Q. And if there is an issue with
19 scheduling the home health aide will call
20 the case coordinator?

21 MR. TSIRKIN: Can you repeat
22 that, please.

23 Q. If there is an issue with
24 scheduling, does the home health aide call
25 the case coordinator?

1 A. KISELEV

2 A. Yes.

3 Q. Are you involved in any way
4 with the scheduling of the home health
5 aide?

6 A. No.

7 Q. Is there a certain policy for
8 payment of wages to the home health aide?

9 MR. TSIRKIN: Do you understand
10 the question?

11 THE WITNESS: Yes, I do
12 understand the question.

13 A. I'm thinking and the policies
14 and procedures do we have something, I
15 don't remember. Policy, a written policy,
16 what kind of policy are you talking about?

17 Q. Is there a written policy?

18 A. I'm not sure.

19 Q. Is there a verbal policy for
20 the payment of wages to home health aides?

21 A. A verbal policy. I have to
22 check the records. I have to check my
23 policy and procedure. I can't give you the
24 answer right away.

25 Q. Is there a standard policy and

1 A. KISELEV

2 procedure for all home health aides?

3 A. Yes.

4 Q. The hiring process is the same
5 for all home health aides, correct?

6 A. Correct.

7 Q. When the home health aide
8 salary is set initially at hiring, who
9 decides that?

10 A. HR person is putting the salary
11 in the system.

12 Q. How do they know what salary to
13 put in?

14 MR. NAYDENSKIY: I'll rephrase.

15 Q. How does the HR person know
16 what salary to put in?

17 A. We have a standard salary,
18 minimum salary is \$11. That is what we put
19 initially.

20 Q. This year, correct?

21 A. Yeah.

22 Q. And then if the home health
23 aide wants more than 11, then they go to
24 the coordinator, correct?

25 A. It will be evaluated on an

1 A. KISELEV

2 individual basis.

3 Q. Does Home Family Care pay for
4 40 hours per work week or 80 for every two
5 weeks?

6 A. No. The payroll is done on a
7 weekly basis. Every week we are running
8 payroll.

9 Q. Did that change before?

10 A. Yes. It has been changed
11 several years ago.

12 Q. Do you remember approximately
13 when?

14 A. No, I don't remember.

15 Q. Does February 2016 sound right?

16 A. The previous, I don't remember.
17 I won't rely on my memory. The previous
18 software won't allow us to do it on a
19 regular basis.

20 Q. Is that a different payroll
21 company that you have now?

22 A. No, it was a different
23 management software.

24 Q. And from there the hours are
25 sent to the payroll company?

1 A. KISELEV

2 A. Yes, sir.

3 Q. Just to clarify.

4 Once a home health aide is
5 hired they are given a salary of minimum
6 wage and any aversion from that would
7 require your approval, correct?

8 A. Yes.

9 Q. A live-in home health aide is a
10 home health aide that is assigned a 24-hour
11 shift and paid for 13, correct?

12 A. Yes.

13 Q. How much are the living home
14 health aides paid?

15 A. Every aid gets paid
16 differently. A different rate. Based on
17 the difficulties.

18 Q. When a living home health aide
19 is hired, is there a set salary given to
20 her initially? Let me rephrase that.

21 When a live-in home health aide
22 is hired, is there a set salary given to
23 him or her initially?

24 A. I didn't get your question.

25 MR. NAYDENSKIY: Can you read

1 A. KISELEV

2 back my question, please.

3 (Whereupon, the referred to
4 question was read back by the
5 reporter.)

6 A. There is no such thing as
7 live-in aide hired. They all applying for
8 a job as a home health aide. And when we
9 have an opened case, an open live-in case
10 we can call any person and offer a
11 position. And if the aide is willing to
12 take this position, then we negotiate the
13 compensation.

14 Q. So, if there is an aide willing
15 to take a live-in position, is there a
16 salary given to him or her initially?

17 A. Initially, what do you mean by
18 the word initially?

19 Q. I will rephrase.

20 It's my understanding and
21 correct me if I am wrong. That a hospital
22 health aide is hired, then the coordinator
23 of the department can offer them a live-in
24 shift, correct?

25 A. Correct.

1 A. KISELEV

2 Q. Will that coordinator assign a
3 salary to that live-in shift for this home
4 health aide?

5 A. Well, the aide is taking a
6 live-in case, they negotiate this rate and
7 this rate is going to be put in the
8 payroll.

9 Q. Who negotiates that rate?

10 A. The case coordinator and the
11 aide.

12 Q. The case coordinator has the
13 authority to negotiate --

14 A. They can say that they will pay
15 a certain amount of money. A standard
16 position rate. \$11 times 13, whatever. If
17 the person says hey, 11 is not enough, I
18 want 12.25 or 11.75, then we discuss what
19 can we do and what we cannot do based on
20 our rights, our compensation rate.

21 Q. What is the standard rate given
22 to a live-in shift?

23 A. \$11 an hour.

24 Q. What was the standard rate
25 given to a live-in shift in 2015?

1 A. KISELEV

2 A. Oh, I don't remember right now.

3 Q. What was the standard rate
4 given to a live-in shift in 2016?

5 A. I don't remember either.

6 Q. It is my understanding and
7 correct me if I am wrong, that a live-in
8 shift is paid a standard rate unless they
9 request more money, correct?

10 MR. TSIRKIN: Objection. That
11 is not what Mr. Kiselev explained.

12 We can go off the record if you
13 would like.

14 MR. NAYDENSKIY: I will
15 rephrase.

16 MR. TSIRKIN: Please.

17 Q. A live-in shift has a standard
18 rate given to the home health aide by the
19 coordinator, correct?

20 A. Correct.

21 Q. And then if the home health
22 aide requests more money, it goes to you
23 and you approve or disapprove, correct?

24 A. Correct.

25 Q. Do you know what the salary is

1 A. KISELEV

2 for a non-live-in shift home health aide?

3 A. I already answered this
4 question, sir.

5 Q. Do you know what the standard
6 rate for a non-live-in shift home health
7 aide in 2015 was?

8 A. I don't remember.

9 Q. Do you remember the standard
10 rate for a non-live-in shift home health
11 aide in 2016?

12 A. I don't remember.

13 Q. How many home health aides are
14 currently employed by Home Family Care?

15 A. Well, I have to consult with
16 the chart department.

17 MR. NAYDENSKIY: We will leave
18 a blank in the deposition testimony
19 for an answer.

20 MR. TSIRKIN: That is fine.

21

22 MR. NAYDENSKIY: Can we mark
23 this as Exhibit 1.

24 (Whereupon, the aforementioned
25 payroll standard voucher was marked

1 A. KISELEV
2 as Plaintiff(s)' Exhibit 1 for
3 identification as of this date by the
4 Reporter.)

5 Q. Mr. Kiselev, can you take a
6 couple of minutes and look through Exhibit
7 1 and please tell me what this is, if you
8 know?

9 A. It is a standard voucher, a
10 payroll standard voucher that is weekly, I
11 would say it is a pay stub.

12 Q. And these are kept in the
13 normal course of business?

14 A. Yes. We don't keep it in the
15 course of business in the office. We don't
16 need this. That is records from the
17 payroll company. We don't store this.

18 Q. Which are kept in the normal
19 course of business, correct?

20 MR. TSIRKIN: Can you define
21 kept? They keep it electronically
22 within the payroll department. They
23 do not keep a paper copy. The paper
24 copy was printed out by you and
25 produced to you at your request.

1 A. KISELEV

2 Q. This is something provided if
3 needed from the payroll company, correct?

4 A. Rephrase, please.

5 Q. If you were to request pay
6 stubs from the payroll company, would you
7 receive this as the pay stubs?

8 A. Yes.

9 Q. And this system was in place
10 prior to the current lawsuit, correct?

11 A. Yes.

12 Q. Only the payroll could store
13 these pay stubs electronically, correct?

14 A. Yes.

15 Q. For all home health aides,
16 correct?

17 A. Yes.

18 Q. At least from January 1, 2015,
19 correct?

20 A. I think so, yes.

21 Q. Mr. Kiselev, would you have a
22 calculator on you?

23 A. Do I have what?

24 Q. A calculator on you.

25 A. Yes, on my cell phone.

1 A. KISELEV

2 Q. If we look at the bottom of the
3 first page it says D000886, right?

4 A. Where is that?

5 Q. On the very bottom of the page.

6 MR. TSIRKIN: It is cut off.

7 A. What is the employee's name?

8 Let's go on the top.

9 Q. Mr. Kiselev, do you see a
10 number at the very bottom that starts with
11 a D?

12 A. Yes, I do.

13 Q. Can you read that number to me?

14 A. D000886.

15 Q. The top of the page it says
16 regular earnings, do you see that?

17 A. Yes, I do.

18 Q. To the right of that it says
19 800?

20 A. Right.

21 Q. And that coordinates below that
22 it says regular earnings to the right of
23 that will say 80, correct?

24 A. Yes.

25 Q. So this employee is getting

1 A. KISELEV

2 paid \$800 for 80 hours of regular time,
3 correct?

4 A. I have to check the schedule.
5 I can't tell you by looking at the pay stub
6 what exactly this particular pay stub
7 represents. Until and unless I'm going to
8 look at the schedule.

9 Q. When looking at this one piece
10 of paper, this person is getting 80 hours
11 regular earnings paid for \$800, correct?

12 A. Correct.

13 Q. And then this person is getting
14 four hours of overtime paid \$48, correct?

15 A. Correct.

16 Q. Can you please calculate 800
17 divided by 80?

18 A. Well, this 80 hours again I
19 don't know what represent this 80 hours.
20 It may be missing payments for another
21 week, all right. It is not like she --
22 this person gets paid for one week
23 80 hours.

24 What we do have in our industry
25 -- let me explain to you how that works.

1 A. KISELEV

2 We have a lot of employees who submit time
3 sheets and sometimes we have missing time
4 sheets.

5 So, a person didn't get paid
6 for a particular week. So, for another
7 week we have to pay for the missing week.
8 That might be the case. Because it is a
9 weekly payroll.

10 If I see 80, it doesn't mean
11 that the person was working 80 hours for
12 one week. That is why I said I need to see
13 the schedule and I need to see how and why
14 she was getting paid 80 hours for this
15 particular week.

16 Q. Looking at just this one piece
17 of paper, can you please calculate 800
18 divided by 80?

19 A. 800 divided by 80 is going to
20 be \$10. I don't need a calculator for
21 that.

22 Q. Can you please divide 48 by
23 four.

24 A. It is going to be 12.

25 Q. So, just based on this one

1 A. KISELEV

2 piece of paper, this person was getting
3 paid \$10 an hour regular pay and \$12 an
4 hour of time pay, correct?

5 MR. TSIRKIN: Objection.

6 A. That is not how I explained to
7 you, sir.

8 MR. TSIRKIN: If we can go off
9 the record.

10 MR. NAYDENSKIY: Sure.

11 (Whereupon, a discussion was
12 held off the record.)

13 MR. NAYDENSKIY: Back on the
14 record.

15 Q. What is the procedure of home
16 health aides recording their time worked?

17 A. Well, we have electronic
18 verification system which is a clock in and
19 clock out. Some people have difficulties
20 with clocking in and clocking out and they
21 are using the time sheets.

22 We employ people with different
23 cultural background and our system
24 recognizes for languages and sometimes
25 people with different languages like Arabic

1 A. KISELEV

2 languages, they do not understand this.

3 In this case they provide us
4 with a time sheet as a proof of service.

5 Q. What does the home health aide
6 do with the time sheets in order to get
7 paid for hours worked?

8 A. That has to be completed by the
9 home health aide according to the plan of
10 care, signed by both patient and home
11 health aide delivered to us on time in
12 order for the payments to be processed.

13 Q. When you say delivered to us,
14 who is it delivered to?

15 A. To the office of Home Family
16 Care, 3051 Brighton 3rd Street in Brooklyn.

17 Q. Is it delivered to anybody in
18 specific?

19 A. No, they can drop it in the
20 mailbox, they can leave it at the front
21 desk, they mail it.

22 Q. What happens to the time sheet
23 after it is processed by Home Family Care?

24 A. We store them on a weekly
25 basis.

1 A. KISELEV

2 Q. Do you store the physical time
3 sheets?

4 A. Of course.

5 Q. Where?

6 A. In our office.

7 Q. And for how long do you keep
8 these records for?

9 A. For six years. Or seven years.

10 Q. How many home health aides
11 gives you physical time sheets as opposed
12 to electronic recording?

13 A. I have no idea.

14 Q. Would you say there is more
15 people recording their hours worked
16 electronically versus the time sheets?

17 A. Yes, but I don't keep the
18 statistics. It is impossible to.

19 Q. If this person on the first
20 page of Exhibit 1 recorded their hours
21 electronically, they would be paid \$10 an
22 hour for 80 hours of work, correct?

23 A. I would say yes.

24 Q. And then --

25 A. But this \$800 in 80 hours does

1 A. KISELEV

2 not represent that she or she or whoever it
3 was working 80 hours for one week.

4 Q. Is it possible this is a
5 two-week pay stub?

6 A. It might. It is not like
7 40 hours regular and 44 supposed to be
8 overtime, no.

9 If you see this 80 hours from
10 my experience, I would say yes.

11 Q. It's two weeks?

12 A. Two weeks, yes. But again,
13 precise, we have to check the schedule. We
14 have to pull the records and see what it
15 is.

16 It is very common in the
17 industry when you have the time sheets and
18 it is our problem was time sheets because
19 we never get them on time. It is always
20 come in late. It is affecting my
21 relationship with home health aides because
22 they didn't get paid on time.

23 Q. Would it be typically for a
24 home health aide who works over 80 hours in
25 a two-week period to receive a stub like

1 A. KISELEV

2 this?

3 A. Well, it's possible. I can't
4 say yes or no. I don't control the payroll
5 department. We have a designated person
6 who runs the payroll. But I would say yes,
7 it's kind of common.

8 Q. So, if this is a two-week pay
9 stub, this person would be paid \$10 an hour
10 for the first 80 hours in a two-week
11 period, correct?

12 A. She would be paid \$10 per hour
13 for 40 hours.

14 Q. Per work week?

15 A. Per work week.

16 Q. And in a two-week pay period
17 will be 80 hours?

18 A. Two weeks will be paid 80.

19 Q. So, this person in regular
20 earnings is paid 40 hours per work week,
21 correct?

22 A. Well, again I don't know her
23 schedule. It may be one week 48 and maybe
24 it was representing three weeks.

25 As I said, we are going in

1 A. KISELEV

2 circles, but I have to see the schedule to
3 answer correctly your question, sir.

4 Q. Can you go to the next page,
5 please. Can you please tell me the name on
6 the bottom that starts with D?

7 A. 000248.

8 Q. Here it says regular earnings
9 are \$880, correct?

10 A. Yes.

11 Q. And then below that it says
12 hours 01, regular earnings 80, correct?

13 MR. TSIRKIN: I don't see that.

14 A. I don't see the either.

15 Q. Let's start over. I'm sorry.

16 The first earnings, it says
17 regular earnings 880, correct?

18 A. Right.

19 Q. And then the next line is
20 earnings 02 overtime earnings 12 zero row,
21 correct?

22 A. Right.

23 Q. And then a little bit below
24 that it says hours, hours 01-regular
25 earnings 80, correct?

1 A. KISELEV

2 A. Yes.

3 Q. And below that it says hours
4 02-overtime earnings, ten, correct?

5 A. Right.

6 Q. It is my understanding from
7 looking at this that the regular earnings,
8 the first time we see earnings is
9 correlated to the regular earnings where we
10 see hours to the left of it, correct?

11 A. Hours related to earnings?

12 Q. The first earnings is
13 correlated to the first time we see hours
14 on this page, correct?

15 A. Right.

16 Q. And this person then made \$880
17 for 80 hours, correct?

18 A. Yes.

19 Q. Can you please calculate 880
20 divided by 80?

21 A. That is like \$11.

22 Q. Can you please use a calculator
23 to calculate --

24 MR. TSIRKIN: This is not a
25 math quiz. He said \$11 an hour.

1 A. KISELEV

2 MR. NAYDENSKIY: I want it to
3 be precise on the record.

4 MR. TSIRKIN: He is precise.

5 MR. NAYDENSKIY: He probably
6 is, but I just want to make sure.

7 MR. TSIRKIN: We are not
8 disposing the calculator here.

9 Do you mind if I do it?

10 MR. NAYDENSKIY: I don't mind
11 at all.

12 MR. TSIRKIN: 880 divided by 80
13 is 11.

14 Q. Can you divide 120 by 10?

15 A. 12.

16 Q. So, this person is making \$11
17 in regular earnings and \$12 in the overtime
18 earnings, correct?

19 A. Correct.

20 Q. And just to be precise, the
21 second time we see earnings it is
22 correlated to the second time we see hours,
23 correct?

24 A. Correct.

25 Q. Can you please go to the next

1 A. KISELEV

2 page.

3 A. Okay.

4 Q. Can you tell me the number on
5 the bottom that starts with D?

6 A. D000239.

7 Q. Here this person is also
8 getting \$800 for regular 80 hours of work
9 for the two-week period, correct?

10 A. Yes.

11 Q. And they are getting \$72 for
12 six overtime hours of work?

13 A. Yes.

14 Q. Can you divide 72 by six,
15 please?

16 A. 12.

17 Q. And the regular earnings are?

18 A. Ten.

19 Q. Please go to the next page.

20 A. Okay. Are we going to go page
21 by page the whole thing?

22 Q. Probably not the whole thing.

23 Can you please tell me the
24 number on the bottom that starts with D?

25 A. D340240.

1 A. KISELEV

2 Q. Please tell me how much this
3 person is earning in regular earnings for
4 the biweekly time period?

5 A. 800.

6 Q. For 80 hours?

7 A. Yes.

8 Q. How much is that per hour?

9 A. Ten.

10 Q. And this person made \$300 in
11 overtime pay for 25 hours of work?

12 A. Yes.

13 Q. How much is 300 divided by 25?

14 A. I have no idea.

15 Q. Can you please use a calculator
16 to calculate 300 by 25.

17 MR. TSIRKIN: By counsel, it is
18 12.

19 Q. Mr. Kiselev, is 300 divided by
20 25, 12?

21 A. Yes.

22 Q. Can you go to the next page?

23 A. Okay.

24 Q. Please tell me the number that
25 starts with a D?

1 A. KISELEV

2 A. D340229.

3 Q. Can you tell me how much this
4 person is making for a regular hour of
5 work?

6 A. 800.

7 Q. For 80 hours?

8 A. Yes.

9 Q. 800 divided by 80, we will take
10 judicial notice is \$10 an hour.

11 MR. NAYDENSKIY: Is that okay
12 with you, counselor?

13 MR. TSIRKIN: We can take
14 judicial notice, yes. But \$10 an
15 hour, that is what the calculator
16 shows.

17 Q. This person made \$216 in
18 overtime for 18 overtime hours worked?

19 A. Yeah.

20 Q. Can you please calculate 216
21 divided by 18?

22 A. 12.

23 Q. Correct me if I am wrong, \$12
24 is not time and a half of \$10; is that
25 correct?

1 A. KISELEV

2 A. That is correct.

3 Q. Can you please look through
4 Exhibit 1 and find an example of overtime
5 earnings being time and a half in the
6 regular earnings?

7 Under the second column where
8 it coordinates the first column and the
9 second column, if you understand my
10 question?

11 MR. TSIRKIN: Please start over
12 again.

13 Q. Can you please flip through
14 Exhibit 1, and the first two earnings that
15 coordinate to the first two hours, the
16 regular earnings and the regular earnings
17 in the earnings section and the regular
18 earnings in the hours section will give you
19 a certain number and the overtime earnings
20 from the earnings section, overtime
21 earnings in the hour section will also give
22 you a certain number.

23 Can you please flip through
24 Exhibit 1 and find one example of where
25 overtime earnings and hours would be

1 A. KISELEV

2 equivalent to time and a half of the
3 regular earnings and hours.

4 A. Well, that is going to take
5 some time.

6 Q. Take your time.

7 Mr. Kiselev, you and I went
8 through the first five pages of Exhibit 1,
9 correct?

10 A. Correct.

11 Q. Can you please look through
12 another 15 pages and see if the overtime
13 earnings will be time and a half of the
14 regular earnings.

15 A. Look at this one. 54 by four.
16 That is a different amount, right?

17 MR. TSIRKIN: Divided it is
18 \$13.50.

19 A. Do you need the page number?

20 Q. Please.

21 A. D340221.

22 Q. This person is making 13.50 for
23 overtime hour?

24 A. Yes, sir.

25 Q. How much are they making for

1 A. KISELEV

2 regular hour?

3 A. It says \$1,000.

4 Q. For how many hours?

5 A. I have no idea. Oh, I'm sorry,
6 that says regular, 80.

7 Q. Can you please divide 1,000 by
8 80?

9 MR. TSIRKIN: 12.50.

10 Q. Mr. Kiselev, is one 1,000
11 divided by 80 12.50?

12 A. Yeah.

13 Q. So this person is making 12.50
14 for regular hours and 13.50 for overtime
15 hour, correct?

16 A. Correct.

17 Q. Can you please do 12.50 times
18 1.5?

19 A. I think it is 19.25.

20 Q. Can you use a calculator,
21 please.

22 MR. TSIRKIN: We will use mine.
23 18.75.

24 MR. NAYDENSKIY: Counselor, I'm
25 sorry, I just have to ask the witness

1 A. KISELEV

2 to testify.

3 A. 18.75.

4 Q. This overtime pay this person
5 is not receiving time and a half for the
6 regular earnings, correct?

7 A. This person received 13.50.

8 Q. Which is less than 18.75,
9 correct? 13.50 is less than 18.75,
10 correct?

11 A. Correct.

12 Q. Can you please continue on and
13 find me one example where the overtime
14 earnings will be time and a half of the
15 regular earnings?

16 A. This one gets rate -- D340135,
17 she gets paid for overtime 13.50.

18 Q. How much does she gets paid for
19 regular hours?

20 A. 12.50.

21 Q. So it is not time and a half,
22 correct?

23 A. No, I don't see no time and a
24 half here.

25 Q. Thank you.

1 A. KISELEV

2 Can you please look at those
3 20 pages and do you see where it says
4 standard voucher on each one?

5 A. Yes.

6 Q. To right of that some kind of
7 payroll number, I guess that is not real
8 relevant and to the right of that is the
9 date.

10 Do you see the date?

11 A. Yes.

12 Q. Can you please check these 20
13 and tell me what is the latest date that
14 you see?

15 A. October 9, 2015.

16 Q. And the earliest would be
17 January 16, 2015.

18 Can you please check these two
19 pages for the earliest date you can see.

20 A. I think it was January 2015,
21 yeah.

22 Q. Just double check.

23 A. Yeah, I think it is January 6,
24 2015.

25 Q. January 6th or January 16th?

1 A. KISELEV

2 A. January 16th. I'm sorry.

3 Q. 2015 for the year?

4 A. 2015, yeah.

5 MR. NAYDENSKIY: Let's take a
6 short break at this time.

7 (Whereupon, a short recess was
8 taken.)

9 MR. NAYDENSKIY: Back on the
10 record.

11 Q. Mr. Kiselev, just to go back
12 one step.

13 You mentioned previously that
14 people clock in and clock out
15 electronically. Is that done through the
16 phone when they come or leave the
17 consumer's or patient's home?

18 A. Yes.

19 Q. Is that recorded in any way?

20 A. Yes.

21 Q. Where would those records be?

22 A. When we were using a different
23 software, Arrow Solution, that should be in
24 their possession.

25 Q. And didn't you switch over at

1 A. KISELEV

2 one point?

3 A. Yes.

4 Q. To what company?

5 A. Care Centa.

6 Q. When did you make that switch?

7 A. I think it was in 2014, but I'm
8 not sure exactly.

9 Q. Prior to January 1, 2015?

10 A. I'm not sure. I would have to
11 check my records.

12 Q. We have an address for Care
13 Centa?

14 A. Yes.

15 Q. Do you know it right now?

16 A. The address?

17 Q. Yes.

18 A. Yes.

19 Q. What is it?

20 A. 3051 Brighton 3rd Street.

21 Q. Do you have any affiliation
22 with Care Centa?

23 A. Yes.

24 Q. What is that affiliation?

25 A. I'm co-owner and co-founder of

1 A. KISELEV

2 this company, of this software.

3 Q. That keeps the records of time
4 worked for home health aides for Home
5 Family Care, correct?

6 A. Yes.

7 Q. How long are these records kept
8 for?

9 A. Forever.

10 Q. Electronically?

11 A. Yeah.

12 MR. NAYDENSKIY: Let's mark
13 this as Exhibit 2.

14 (Whereupon, the aforementioned
15 electronic payroll stubs were marked
16 as Plaintiff(s)' Exhibit 2 for
17 identification as of this date by the
18 Reporter.)

19 Q. Mr. Kiselev, does this look
20 familiar to you?

21 A. Yes.

22 Q. Similar pay stubs as
23 Plaintiff's Exhibit 1?

24 A. Yes.

25 Q. Can you please flip through all

1 A. KISELEV

2 these pages and all of these pages except
3 one will have a section called live-in
4 earnings?

5 MR. TSIRKIN: Any purpose of
6 that, flip through the pages?

7 MR. NAYDENSKIY: Just to
8 quantify that this is all for the
9 live-in shifts except one. That was
10 higher or?

11 MR. TSIRKIN: Do you understand
12 what you are looking for?

13 A. I just see that it is a live-in
14 compensation for live-in home health aides.

15 Q. My apologies, except for two
16 pages.

17 A. Okay.

18 Q. All these pages in Exhibit 2,
19 except two of the pages are for
20 reimbursements for a live-in shift; is that
21 correct?

22 A. Yes.

23 Q. A live-in shift is paid a rate
24 for the 24-hour shift, correct?

25 MR. TSIRKIN: Can you please

1 A. KISELEV

2 rephrase your question.

3 MR. NAYDENSKIY: Sure.

4 Q. A live-in shift is paid a daily
5 rate, correct?

6 A. I don't know.

7 Q. How are live-in shift employees
8 paid?

9 A. They are paid on an hour basis.
10 I have to see the schedule again. It is
11 hard for me to say what it is. There is
12 live-in earning 12.

13 Q. So, if you look at the first
14 page, the first time you see hours, it says
15 hours 09-live in earnings 13, correct?

16 A. Yes.

17 Q. Is this 13 hours, 13 days or
18 13 minutes?

19 A. I have to consult with my
20 payroll department. I don't remember
21 honestly.

22 Q. You mentioned earlier this is
23 one person who works in the payroll
24 department, correct?

25 A. Yes.

1 A. KISELEV

2 Q. What is the name?

3 A. Maria.

4 Q. What is her last name?

5 A. It escapes me now.

6 MR. NAYDENSKIY: We will leave
7 a blank and you can supply it.

8

9 Q. Do you remember when Maria in
10 the payroll department started working for
11 Home Family Care?

12 A. About three years ago, but she
13 was working at the front desk. I don't
14 remember when she start working on doing
15 payroll.

16 Q. Was she doing payroll from
17 January 1, 2015?

18 A. I can't tell you. I don't
19 remember.

20 Q. In 2016, what was the method of
21 paying a live-in shift?

22 MR. TSIRKIN: Can you please
23 rephrase your question.

24 MR. NAYDENSKIY: I will
25 rephrase.

1 A. KISELEV

2 Q. In 2016 a live-in shift, paid
3 on a daily basis or an hourly basis?

4 A. Daily basis.

5 Q. In 2015, was a live in shift
6 paid on a daily basis or an hourly basis?

7 A. Daily basis.

8 Q. And a daily basis covers
9 13 hours of work, right?

10 A. Right.

11 Q. And the 11 hours that is not
12 paid is considered sleep and meal time; is
13 that correct?

14 A. 11 hours?

15 Q. That is not paid for is
16 considered sleep and mealtime, correct?

17 A. Yes.

18 Q. If I can ask you to look at the
19 first page of Exhibit 2. The bottom says
20 D000203, correct?

21 A. Correct.

22 Q. You just testified that a
23 live-in shift would be paid a daily rate.
24 Therefore, where it says hours, 09-live-in
25 earnings-13, this would mean that the

1 A. KISELEV

2 13 days worked in a two-week period,
3 correct?

4 MR. TSIRKIN: Objection. He
5 did not say that.

6 A. I did not say that.

7 Q. In 2015, how was a live-in
8 shift paid?

9 A. On a daily basis.

10 MR. TSIRKIN: Can we go off the
11 record for a second?

12 MR. NAYDENSKIY: Sure.

13 (Whereupon, a discussion was
14 held off the record.)

15 MR. NAYDENSKIY: Back on the
16 record.

17 Q. Just to be clear, in 2015 a
18 live-in shift was paid a daily rate of pay,
19 correct?

20 A. Correct.

21 Q. Can you please look on the date
22 here where it says standard voucher and
23 there is a number and then the date.

24 Can you tell me the date of
25 this?

1 A. KISELEV

2 A. 4/24/15.

3 Q. So, this employee in 2015 was
4 working as a live-in was getting paid a
5 daily rate of pay.

6 Would that somehow be indicated
7 on this piece of paper?

8 A. I can't say precisely. I can
9 only assume. I have to consult with the
10 payroll company.

11 Q. Is it safe to assume that the
12 number 13 here in the section where it says
13 hours 09-live-in earnings 13, is 13 days
14 worked?

15 A. As I said I have to consult
16 with the payroll company.

17 Q. Payroll company or payroll
18 employee?

19 A. The payroll company, sir. The
20 loss time I was doing payroll was many
21 years ago. I just have to consult with
22 them before I'm going to tell you.

23 Q. You decide the policy of wages
24 in Home Family Care?

25 A. Yes.

1 A. KISELEV

2 Q. You just don't remember; is
3 that correct?

4 A. Yes.

5 Q. You just don't remember what it
6 stands for.

7 MR. NAYDENSKIY: Let's mark
8 this packet of documents as
9 Plaintiff's 3.

10 (Whereupon, the aforementioned
11 packet of payroll stubs was marked as
12 Plaintiff(s)' Exhibit 3 for
13 identification as of this date by the
14 Reporter.)

15 Q. Mr. Kiselev, Exhibit 3 is
16 similar pay stubs to Exhibits 1 and 2; is
17 that correct?

18 A. Yes.

19 Q. Can you please flip to the
20 second page of this exhibit.

21 On the bottom it says D000253.
22 Can you please tell me the date on this?

23 A. 5/6/2016.

24 Q. And this person is making \$440
25 for \$40 for a 40-hour work week, correct?

1 A. KISELEV

2 A. That is correct.

3 Q. Can you please divide 450 by
4 40?

5 A. 11.

6 Q. And then this person made \$84
7 overtime pay for seven overtime hours
8 worked, correct?

9 A. Correct.

10 Q. Can you please divide 84 by
11 seven?

12 A. 12.

13 Q. And for the next page. On the
14 bottom it says D000255, correct?

15 A. Correct.

16 Q. Dated May 6, 2016, correct?

17 A. Yes.

18 Q. This person is making \$500 an
19 hour for the first 40 hours per work week,
20 correct?

21 A. Yes.

22 Q. Can you please divide 500 by
23 40?

24 A. 12.50.

25 Q. And then this person also

1 A. KISELEV

2 earned \$108 in overtime pay for eight hours
3 worked, correct?

4 A. Yes.

5 Q. Can you please divide 108 by
6 eight?

7 A. 13.50.

8 Q. The next page it says D000256.
9 The date is March 4, 2016, correct?

10 A. Correct.

11 Q. This person made \$500 for
12 40-hour work week, correct?

13 A. Yes.

14 Q. Can you please divide 500 by
15 40 hours?

16 A. 12.50.

17 Q. Can you please double check 500
18 divided by 40?

19 A. Yeah.

20 Q. And then this person made \$108
21 in overtime pay for eight overtime hours?

22 A. Yes.

23 Q. Can you please divide 108 by
24 eight?

25 A. 13.50.

1 A. KISELEV

2 Q. And the next page is marked on
3 the bottom the number is D000257. This is
4 dated November 10, 2016, correct?

5 A. Yes.

6 Q. And this person made \$500 in
7 regular earnings for 40 regular hours
8 worked, correct?

9 A. Correct.

10 Q. We will take judicial notice
11 500 divided by 40 according to the
12 calculator is \$12.50 and then this person
13 made \$27 in overtime pay for two overtime
14 hours worked, correct?

15 A. Yes, 13.50.

16 Q. Which equals 13.50 for each
17 overtime hour, correct?

18 A. Correct.

19 Q. Can you please look at the next
20 15 and tell me one example where the
21 overtime earnings paid would be one and a
22 half of the regular earnings paid?

23 A. Well, that is too many papers
24 we have here.

25 Q. The next 15.

1 A. KISELEV

2 A. Okay.

3 Q. Could you find one example?

4 Can you find one example of
5 your review of overtime pay with time and a
6 half as the regular pay?

7 A. No.

8 Q. Mr. Kiselev, have you ever
9 sought legal advice on how to pay your
10 employees overtime pay?

11 A. Legal advice, no.

12 Q. Have you ever sought advice
13 from the Department of Labor on how to pay
14 overtime pay?

15 A. I don't remember.

16 Q. In 2015, did you seek advice
17 from the Department of Labor how to pay
18 overtime pay?

19 A. I just don't remember at this
20 time.

21 Q. Do you remember if in 2016 you
22 sought advice from the Department of Labor
23 how to pay overtime pay?

24 A. Well, I know how to pay my
25 employees.

1 A. KISELEV

2 MR. TSIRKIN: Can you please
3 answer the question.

4 Q. Did you ever seek legal advice
5 on how to comply with the federal and New
6 York Labor Law requirements on overtime
7 pay?

8 A. Seek advice?

9 Q. Legal advice.

10 A. I think so, yes.

11 Q. When?

12 A. Probably in 2015.

13 Q. Whom did you seek this legal
14 advice from?

15 A. I spoke with the Department of
16 Labor.

17 Q. Did you speak with an attorney?

18 A. No.

19 Q. Did you speak with a private
20 attorney?

21 A. No.

22 Q. So, in 2015 you spoke with the
23 Department of Labor, correct?

24 A. Yes.

25 Q. What did you ask of them?

1 A. KISELEV

2 A. About how to apply the rates,
3 how to apply, how to stay in compliance.
4 We had been audited, but the Department of
5 Labor and --

6 Q. Do you know when in 2015 you
7 had this conversation with them?

8 A. No.

9 Q. Was it before October 2015?

10 A. No, I don't remember.

11 Q. What did they tell you?

12 A. It was different discussions
13 about different issues with payroll.

14 Q. In regard to the overtime pay,
15 what did the Department of Labor tell you?

16 MR. TSIRKIN: Objection. We
17 didn't establish that he asked this
18 question.

19 Q. In 2015, did you ask the
20 Department of Labor how to comply with
21 federal and labor law overtime pay
22 requirement?

23 A. Yes.

24 Q. What did they tell you in
25 regard to that?

1 A. KISELEV

2 A. Well, I believe there was a
3 number of confusion with the payroll, with
4 overtime rates. And at the beginning it
5 wasn't clear in the industry how to apply
6 overtime rates.

7 It took sometime until the
8 situation was clear to us as a
9 practitioners how to apply overtime rates.

10 Q. When did it become clear to you
11 how to apply overtime rates?

12 A. I don't remember right now.

13 Q. Do you have any documents
14 showing this conversation between you and
15 the Department of Labor?

16 A. I can search through my
17 records.

18 Q. Did the Department of Labor
19 send you anything by e-mail regarding this
20 conversation?

21 A. I receive so many e-mails on a
22 day-to-day basis. Can I check my records?

23 Q. Did you send the Department of
24 Labor an e-mail regarding this
25 conversation?

1 A. KISELEV

2 A. Well, there was a number of
3 inquiries, but it was a couple of years
4 ago. I just don't remember. The majority
5 was simple calls.

6 Q. Whom did you speak with at the
7 Department of Labor regarding overtime pay?

8 A. I made a number of inquiries.
9 I just don't remember. I spoke with my
10 payroll company, with them, with the
11 Department of Labor.

12 Q. Is 2015 the only time you spoke
13 with the Department of Labor regarding
14 compliance with federal and New York Labor
15 Law overtime requirements?

16 A. I don't remember. I spoke with
17 the Department of Labor on numerous
18 occasions. I just don't keep the records
19 of every call I make.

20 Q. Do you have any electronic
21 conversations with the Department of Labor
22 regarding overtime pay?

23 A. I can check my records. I
24 won't say anything based on my memory. I
25 get hundreds of e-mails on a day-to-day

1 A. KISELEV

2 basis.

3 Q. In 2015, did Home Family Care
4 gross more than \$500,000?

5 A. Yes.

6 Q. In 2016, did Home Family Care
7 gross more than \$500,000?

8 A. Yes.

9 Q. In 2017, did Home Family Care
10 gross more than \$500,000?

11 A. I would assume so.

12 MR. NAYDENSKIY: I'm sorry,
13 strike that last question. I will
14 rephrase that.

15 Q. Is Home Family Care on track to
16 gross more than \$500,000 in 2017?

17 A. Yeah.

18 Q. Starting from 2017, did your
19 payroll practices change?

20 A. Yes.

21 Q. How?

22 A. We pay one and a half. We
23 correct this mistake in the system and we
24 pay 1.5 to every employee overtime rates.

25 Q. How much is a live-in shift at

1 A. KISELEV

2 home health aide paid?

3 A. For the first 40 hours it's 11
4 or \$12, whatever we agree as a base and
5 then starting from the 41-hour it is
6 overtime.

7 Q. And the overtime is one and a
8 half times --

9 A. The base.

10 Q. The hourly rate for the first
11 40?

12 A. Yes.

13 MR. NAYDENSKIY: Off the
14 record.

15 (Whereupon, a discussion was
16 held off the record.)

17 MR. NAYDENSKIY: Back on the
18 record.

19 Q. Mr. Kiselev, I have one final
20 question.

21 A. Sure.

22 Q. You said earlier when a home
23 health aide is hired they go through an
24 orientation, correct?

25 A. Correct.

1 A. KISELEV

2 Q. Is this orientation paid for?

3 A. No.

4 Q. How long is the orientation
5 for?

6 A. That takes two, three hours.

7 Q. Does the home health aide then
8 go to her job assignment?

9 A. No. Orientation is just a final
10 step in their conversion to the employee
11 status. But it doesn't mean they go on a
12 case. It means they are going to be
13 eligible to work.

14 It is mandatory in the State of
15 New York that every employee in the home
16 care industry has to go through
17 orientation.

18 Q. But the orientation is not
19 paid, correct?

20 A. Correct.

21 MR. NAYDENSKIY: Mr. Kiselev, I
22 have nothing further unless Mr.
23 Tsirkin has any questions.

24 MR. TSIRKIN: No.

25 MR. NAYDENSKIY: Thank you.

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A. KISELEV
(Whereupon, at 12:45 P.M., the
Examination of this witness was
concluded.)

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A. KISELEV
D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

ALEXANDER KISELEV

Subscribed and sworn to before me
this ____ day of _____ 20____.

NOTARY PUBLIC

1 A. KISELEV

2 E X H I B I T S

3
4 PLAINTIFF EXHIBITS

5	EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
6	1	Payroll standard records	29
7	2	Electronic payroll stubs	53
8	3	Packet of payroll stubs	60

9
10 (Exhibits retained by Counsel.)

11 I N D E X

12	EXAMINATION BY	PAGE
13	MR. NAYDENSKIY	4

15	INFORMATION AND/OR DOCUMENTS REQUESTED INFORMATION AND/OR DOCUMENTS	PAGE
16	Insert how many home health aides Are currently employed by Home Family Care.	29
18	Insert Maria's full name.	56

20
21 QUESTIONS MARKED FOR RULINGS
PAGE LINE QUESTION

22 (None)

23

24

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A. KISELEV

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

I, GARY MEROLA, a Notary Public for and
within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not related
to any of the parties to this action by
blood or by marriage and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 10th day of November 2017.



GARY MEROLA

A. KISELEV

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